MOTION FILED

OCT 20 2000

(5)

No. 00-433

In The

Supreme Court of the United States

WESTSIDE QUIK SHOP, INC., ET AL.,

Petitioners,

vs.

ROBERT M. STEWART, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of South Carolina

MOTION TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF INGRAM INVESTMENTS, INC. AND HENRY E. INGRAM, JR.

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30 pp

QUESTION PRESENTED

Whether the South Carolina Supreme Court has violated the procedural due process rights of the petitioners and the *amici curiae* by violating or ignoring well established procedural rules, and by depriving them of adequate notice and an opportunity to be heard before rendering decisions on the merits in cases before it which substantially impaired the petitioners', and the *amici curiae*'s private property interests?

MOTION TO FILE BRIEF *AMICI CURIAE*

Ingram Investments, Inc. and Henry E. Ingram, Jr. respectfully petition this Court for leave to file the annexed brief *amici curiae*, in support of petitioners' petition for writ of certiorari, pursuant to Supreme Court Rule 37.2(b). Written consent of all the parties was sought pursuant to Supreme Court Rule 37.2(a). The Petitioners have given their consent to this *amici* brief. However, the Respondents have refused to consent to the filing of the *amici* brief.

Similar to that of petitioners, *amici*'s video gaming businesses were closed and *amici* were financially ruined when enforcement of Act No. 125 took effect on July 8, 2000. Also, like petitioners, *amici* have suffered numerous violations of their procedural due process rights in having their case heard before the Supreme Court of South Carolina and, as a result, will present additional information which would be helpful to this Court in its decision on petitioner's certiorari petition. Thus, *amici* hereby respectfully request this Court grant them leave to file a Brief, as *amici curiae*.

Respectfully submitted by:

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BRIEF *AMICI CURIAE*

Pursuant to Rule 37.2 of the Rules of Court, *amici curiae* submit this brief in support of Petitioners' petition for a writ of certiorari.[1] Petitioners have consented to the filing of this brief.[2]

IDENTITY AND INTEREST OF *AMICI CURIAE*

The *amici curiae* are Ingram Investments, Inc. and Henry E. Ingram, Jr.[3] Prior to July 1, 2000, Ingram Investments, Inc. operated video gaming devices in the State of South Carolina. It was the largest video game machine operator in the southeast region of the State of South Carolina and was the largest employer in rural Jasper County, South Carolina. Ingram Investments employed nearly 200 residents of South Carolina, nearly all of whom depend on the continued vitality of the video gaming industry for their economic livelihood. Henry E.

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[1] No counsel for either party authored this brief *amici curiae*, either in whole or in part. Furthermore, no person or entity other than *amici curiae* and their counsel made any monetary contribution to the preparation or submission of this Brief.

[2] *Amici* have requested permission from respondents; they have refused. Accordingly, *amici* have filed a Motion for Leave to file this Brief, *supra*.

[3] Copies of the request for consent, along with the Petitioner's consent, are being filed with the Clerk of Court contemporaneously herewith. No counsel for either party authored this brief in whole or in part, and no person or entity other than the *amici curiae* and its counsel made any monetary contribution to the preparation or submission of this brief.

Ingram, Jr. is its principle stockholder.[4] Ingram Investments, Inc. had video poker machines seized by the respondents on July 2, 2000, suffered a total loss of many of its businesses, and terminated the employment of virtually all of its employees, all without compensation from the State of South Carolina when Act No. 125 was fully implemented on July 8, 2000.

The *amici curiae* have an interest in the present action because they endured similar constitutional deprivations in the South Carolina Supreme Court's effort to fast track the petitioners and the *amici curiae* out of business.

SUMMARY OF ARGUMENT

This *amici curiae* Brief is not intended to bolster the arguments which have already been clearly and thoroughly set forth by the petitioners in this case. Instead, *amici* seek to draw this Court's attention to serious procedural irregularities in another video poker case that has, similar to the case here, improperly found its way into the South Carolina Supreme Court for summary adjudication on an important procedural issue. The purpose of this Brief is not to seek any relief from this Court; rather, it is to provide additional perspective for this Court from which to consider the due process violations

[4] Ingram Investments, Inc. and Henry E. Ingram, Jr. are hereafter collectively referred to as "Ingram" throughout this brief.

perpetrated against the petitioners by the South Carolina Supreme Court as alleged in their Brief.

The South Carolina Supreme Court has similarly violated Ingram's constitutionally mandated due process rights as well as in connection with an action filed in the Jasper County, South Carolina Court of Common Pleas ("the trial court") in which Ingram challenges the constitutionality of Act No. 125. *Ingram Investments, Inc., TBHL, Inc. and Henry E. Ingram, Jr. v. Robert M. Stewart, Sr., in his capacity as Chief of the State Law Enforcement Division and Charles M. Condon, in his capacity as Attorney General for the State of South Carolina,* Civil Action No. 2000-CP-27-189.[1] Specifically, the South Carolina Supreme Court issued a hand written order of supersedeas staying the enforcement of a valid temporary restraining order Ingram obtained in the trial court on Friday, June 30, 2000 which enjoined the enforcement of South Carolina Act No. 125, and temporarily saved Ingram's businesses and its employees' livelihood.

The South Carolina Supreme Court, upon oral motion by the respondents, issued the Order of supersedeas (hereafter "the Order") in the late evening hours on Friday, June 30, 2000. The Supreme Court issued its Order based solely on a telephone call from the respondents placed several hours after the Court closed its doors for the weekend. Remarkably, at the time respondents moved by telephone for relief before the South Carolina Supreme Court, they did not have or present to the Court the

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[1] TBHL, Inc. is another Ingram owned video poker business.

pleadings upon which the trial court order was based, nor did they follow any of the mandatory procedural rules for petitioning the South Carolina Supreme Court for supersedeas. Nonetheless, the South Carolina Supreme Court granted the unsworn, oral motion of the respondents and issued the Order in respondents' favor.

The South Carolina Rules of Appellate Procedure provide safeguards that prevent private property interests from being adversely affected without basic procedural due process. Those rules were flagrantly disregarded by the respondents with the blessing and tacit cooperation of the South Carolina Supreme Court. A close examination of the present case, in conjunction with that of *Ingram v. Stewart* discussed in detail, *infra*, reveals the chilling reality that persons in the South Carolina video gaming industry, including the petitioners and Ingram, were swiftly bullied through the court system of South Carolina in a thinly veiled effort to abolish the video gaming industry "on time", i.e., by July 8, 2000. This was all accomplished in violation of the procedural due process rights of the petitioners, Ingram, and possibly others.

ARGUMENT

I. THE SOUTH CAROLINA SUPREME COURT HAS VIOLATED THE PROCEDURAL DUE PROCESS RIGHTS OF OTHER LITIGANTS IN SOUTH CAROLINA'S VIDEO POKER INDUSTRY, GUARANTEED BY THE UNITED STATES CONSTITUTION, BY VIOLATING ITS OWN RULES OF PROCEDURE AND IMPROPERLY AND/OR PREMATURELY SEIZING JURISDICTION OVER CONTROVERSIES CENTERED ON THE CONSTITUTIONALITY OF ACT NO. 125.

Tens of thousands of South Carolinians were employed in the video gambling industry prior to July 1, 2000. Act No. 125 not only abolished the billion-dollar video poker industry, it put thousands of its workers in the unemployment lines. The collateral effects of Act No. 125 are still unknown, but they will surely be substantial, and they will likely cause a tremendous financial burden on the State of South Carolina and the people who live there. With stakes such as these, the constitutional challenges to the Act, levied by the petitioners and Ingram, as well as others, were certainly anticipated by the respondents and the South Carolina judiciary. What was not anticipated, not by Ingram or the petitioners at least, is the peculiar procedural course through the South Carolina judiciary that these cases have followed. Both cases have found their way prematurely to the South Carolina Supreme Court where rulings on the merits have been made which, to say it mildly, have substantially impaired the property interests of these video poker plaintiffs.

Ingram will not attempt to improve upon the petitioners' clear and articulate arguments presented in their

brief; suffice it to say that Ingram is in accord with all issues contained therein. Instead, Ingram seeks in this brief only to provide some perspective for this Court so that it may fully appreciate the importance of the procedural due process violations perpetrated against the petitioners by the South Carolina Supreme Court that were alleged in the relevant portions of their brief. Towards that end, Ingram points out similar abuses of procedure and constitutional due process violations in *Ingram v. Stewart, supra,* another video poker lawsuit.

PROCEDURAL HISTORY

Ingram filed a lawsuit on June 30, 2000 against the respondents in the South Carolina Court of Common Pleas alleging that Act No. 125, which abolished video gaming in the state of South Carolina, violated the Contracts Clause of both the state and federal constitutions. Ingram also asserted claims for promissory estoppel, as well as civil rights violations perpetrated by these state officials. *See Ingram Investments, Inc., TBHL, Inc. and Henry E. Ingram, Jr. v. Robert M. Stewart, Sr., in his capacity as Chief of the State Law Enforcement Division and Charles M. Condon, in his capacity as Attorney General for the State of South Carolina.* Ingram filed the Summons and a verified Complaint in the South Carolina Court of Common Pleas, Jasper County at approximately 1:30 p.m. on Friday, June 30, 2000, the day before the ban on video poker became effective. That same day, Ingram properly moved, pursuant to Rule 65, S.C.R.C.P., for a temporary restraining order seeking a brief reprieve from the Act's provisions until a merits hearing could be held days later in the

lower court. Ingram's pleadings and motion for a temporary restraining order were reviewed and heard by the Honorable Circuit Court Judge Gerald Smoak on June 30, 2000 at approximately 3:00 p.m. just prior to his formal retirement from the bench. After considering the matter, Judge Smoak issued the temporary restraining order Ingram requested.[2] Thereafter, Judge Smoak's Order was filed with the Jasper County Clerk of Court, and it was that day served along with the Summons and Complaint upon the petitioners by certified mail, return receipt requested, in accordance with Rule 65 and Rule 4 of the South Carolina Rules of Civil Procedure.

At approximately 8:00 p.m. on June 30, 2000, Ingram sent a copy of Judge Smoak's Order to officials with the South Carolina Law Enforcement Division. At approximately 9:45 p.m., the Honorable Chief Justice Jean H. Toal with the South Carolina Supreme Court personally filed Smoak's Order. At 10:15 p.m., the Supreme Court entered the Order, hand written on two (2) sheets of notebook paper, which stayed the enforcement of Judge Smoak's Order.[3] The Order was faxed to counsel for Ingram at 11:21 p.m. It was after all of this that the respondents

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[2] Judge Smoak's order is attached as Appendix 1-2 and made a part of this Brief. It is the only document that the South Carolina Supreme Court had before it when it issued the Order discussed herein.

[3] The Supreme Court based its ruling in the Order on its holding in this case; however, no two claims in these actions are alike. The Supreme Court must have assumed, erroneously, that Ingram was also alleging a constitutional "takings" claim. He was not. The Order is attached and incorporated as Appendix 3-4.

served a Notice of Appeal of Judge Smoak's Order with the South Carolina Supreme Court.[4]

A. Respondents and the South Carolina Supreme Court Violated Every Procedural Rule Applicable to the Acquisition and Entry of the Order in Another Video Poker Case, *Ingram v. Stewart*.

The South Carolina Supreme Court promulgated the South Carolina Rules of Appellate Procedure, which were flagrantly violated by the respondents with the South Carolina Supreme Court's blessings in the case of *Ingram v. Stewart, supra*. Ordinary citizens of South Carolina have never been permitted to avail themselves of the short-circuited procedure that was used by the respondents in obtaining the Order. One only needs to compare the actual procedure required for obtaining a supersedeas in South Carolina with that used by the respondents to see the grave injustice to Ingram that occurred at their hands and those of the South Carolina Supreme Court. The South Carolina Rules of Appellate Procedure, Rule 225, governs the inquiry. Rule 225 provides, in pertinent part:

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[4] The Proof of Service [Appendix 6] is dated June 30, 2000. It certifies that service of the notice of appeal and the Order was accomplished simultaneously. Accordingly, because jurisdiction of the Supreme Court was not invoked until service of the notice of appeal was accomplished, and because the Order was already obtained by that time, the Supreme Court was without subject matter jurisdiction to hear or rule on respondents' motion, and to enter the Order. S.C.R.A.P., Rule 205 (*"Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction* * * *"*). Nevertheless, the Court did so.

(d) **Procedure for Obtaining Lift of Stay or Supersedeas.**

(1) Except where extraordinary circumstances make it impracticable, **an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court which entered the order on appeal.** The issuance of an ex parte order or an unnecessary delay by the lower court in ruling on this application shall constitute an extraordinary circumstance. (Emphasis added).

* * *

(3) A person seeking * * * a writ of supersedeas **must file a written petition verified by the client. The petition shall be captioned the same as the appeal. In addition to the petition and verification, the moving party must contemporaneously file a certified copy of the lower court's order and a copy of the notice of appeal with its proof of service.** (Emphasis added).

(4) The petition shall contain:

(A) the factual background necessary for an understanding of the petition. If the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements;

(B) the grounds for the petition, and legal arguments with supporting points and authority;

(C) a showing that an application for this relief was made to the lower court and was unjustifiably denied or that the relief granted failed to afford the relief which the petitioner requested. A certified copy of the lower court's

ruling must be included. If no application was made to the lower court, then the petition shall state the extraordinary circumstances which made it impracticable to make such an application.

(5) **The petition and accompanying documents shall be served on the opposing party(s).** Upon application to the full appellate court, one original and six copies, and a certificate of service shall be filed with the clerk of the appellate court. If the relief is sought from an individual judge or justice, the original and two copies must be filed with him. The individual judge or justice shall forward the original documents, including a copy of any order in the matter issued by him, to the clerk of the appellate court as soon as possible. (Emphasis added).

(6) **A supersedeas or order lifting the automatic stay may be issued ex parte only where exigent circumstances require that action be taken before there is time for a hearing. An ex parte order shall issue only if:** (Emphasis added).

(A) it clearly appears from specific facts **shown by affidavits or included in the verified petition** that immediate and irreparable injury, loss or damage will result before the opposing party can respond (Emphasis added); and

(B) **the moving party's attorney certifies in writing,** as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required. (Emphasis added).

> (7) Any party aggrieved by the decision of the lower court or an individual judge or justice may petition under this Rule for a review of that decision.

S.C.R.A.P., Rule 225.

It is readily apparent that none of the emphasized portions of Rule 225, set forth above, were obeyed by the respondents, nor was compliance required or requested by the Supreme Court, in their apparently joint efforts at obtaining and entering the Order. Respondents contend that the "extraordinary circumstances" presented in their case against Ingram somehow permitted an oral motion to the Court for supersedeas without any petition, affidavit, attorney certificate, or other supporting documentation.[5] This is nonsense. There were no "extraordinary circumstances." Respondents were entitled to a hearing in the trial court if they so chose within forty-eight (48) hours of the date and time of Judge Smoak's Order, perhaps earlier. *See* S.C.R.C.P., Rule 65. Rule 65 allowed for a hearing as early as Monday, July 3, 2000. Accordingly, respondents implicitly contend that it was an *emergency* that Ingram was permitted under the terms of Judge Smoak's Order to operate its machines in the same manner as it had for the last ten (10) years for *one additional day* without a merits hearing (video poker machines cannot operate legally in South Carolina on Sundays). These are not "extraordinary circumstances" and, even if

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[5] A letter dated July 3, 2000 [Appendix 7-8] from counsel for the respondents to Ingram's trial counsel details the chain of events concerning their acquisition of the Order.

they were, Rule 225 outlines a specific and simple mechanism by which respondents could have lawfully obtained a valid writ of supersedeas (if they were otherwise entitled to it) under the alleged "extraordinary circumstances." See S.C.R.A.P., Rule 225(d)(6).

The procedural mandates of Rule 225 were not followed by the respondents in *Ingram v. Stewart, supra,* because they could not be. Not because of time constraints or "extraordinary circumstances," but because they could not establish the requisite "immediate and irreparable damage" which they had to prove awaited them if Ingram was afforded an opportunity to respond to their motion. *See* S.C.R.A.P., Rule 225(d)(6)(A). Simply put, the respondents had no legal basis on which to obtain a supersedeas, so they sought the same from the South Carolina Supreme Court, and incredibly obtained it, by simply ignoring the mandatory procedural rules.

The South Carolina Supreme Court granted an unsworn, oral motion made by the respondents who, at the time their motion was made, had not even glanced at the complaint in the underlying action. It made no difference to the respondents what the effect of Act No. 125 was to Ingram and its employees; it mattered only that they immediately enforce the ban on video poker. In accomplishing their goal, the respondents commandeered the South Carolina Supreme Court, and they sought and obtained the Order which stayed the enforcement of a valid trial lower court order issued by a judge who carefully reviewed the facts of the case before him. The respondents justify their actions by claiming that the situation was "extraordinary."

Since that time, the Supreme Court has accepted the case in its original jurisdiction to fast track its way to demise. Ingram will not be afforded discovery or testimony. The case will die the same death in state court as the one pending before this Court. There is no doubt about it.[6] It is impossible to adequately express the dangerous precedent set by the South Carolina Supreme Court in *Ingram v. Stewart, supra*. The respondents, under color of state law, have accomplished the heretofore unaccomplishable. They persuaded the South Carolina Supreme Court, by telephone call, and not by notice, motion, briefing and argument, to stay the enforcement of a valid court order with neither the respondents nor the Supreme Court having ever reviewed the pleadings or considered merits of the case upon which the trial court's order was based.

B. These Violations of the South Carolina Rules of Appellate Procedure are Tantamount to Due Process Violations of the United States Constitution.

"[No state shall] deprive any person of life, liberty or property, without due process of law." U.S. Const. Amend. XIV, § 1. Ingram has a constitutionally protected property interest in his video gaming business; accordingly, due process mandates that his business not be

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[6] A startling footnote to the video poker saga is that the South Carolina Attorney General, a respondent here, asked the South Carolina Supreme Court to investigate Judge Smoak, the trial judge who granted the temporary injunction in favor of Ingram. Such conduct is unprecedented, just like all of the events in these cases.

stripped away or substantially impaired by governmental action without procedural safeguards. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). At a minimum, these safeguards include notice of the proceedings, and an opportunity to be heard in a meaningful way. U.S. Const. amends. V, XIV. With respect to the focal inquiry in *Ingram v. Stewart, supra*, safeguards complying with due process requirements are found in the South Carolina Rules of Appellate Procedure, Rule 225; however, those rules were ignored by the respondents and the South Carolina Supreme Court. Respondents' side stepping of the procedural safeguards in place by orally moving before the Supreme Court for supersedeas, without notifying Ingram, and without making even a *prima facie* showing to the Court of their entitlement to the relief they sought and obtained, deprived Ingram of a protected property interest not only in his business, but also in the rights afforded him by the trial court's order.

The petitioners are no longer the only video poker operators who have been blind-sided by procedural irregularities in the South Carolina Supreme Court which have operated to deprive them of their private property interests. Ingram now shares with petitioners that dubious distinction. Viewing the case of *Ingram v. Stewart, supra*, in tandem with the present case before this Court, casts light on what is really going on in the State of South Carolina. Video poker was abolished unintentionally by our legislature without a vote by the people. Nonetheless, the respondents were determined to see that the industry was destroyed on schedule, i.e., by July 8, 2000, regardless of the deprivations of the gaming industry owners'

constitutionally protected due process rights. The South Carolina Supreme Court appears to have joined in the respondents' quest for expediency in spite of the serious constitutional issues that should properly have been addressed before this billion-dollar industry was destroyed overnight.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court grant the Petition for Writ of Certiorari.

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October 20, 2000.

**Counsel of Record for Amici Curiae*

RECEIVED – S.C. SUPREME COURT
By Jean H. Toal Chief Justice
at 9:45 p.m. June 30, 2000

STATE OF SOUTH CAROLINA COUNTY OF JASPER	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
INGRAM INVESTMENTS, INC.; TBHL, Inc. and HENRY INGRAM. JR., Plaintiffs, v. ROBERT M. STEWART, SR., in his official capacity as Chief of the State Law Enforcement Division; CHARLES M. CONDON, In his official capacity as Attorney General for the State of South Carolina, Defendants.	C.A. NO.: 2000-CP-27-189 TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION (Filed June 30, 2000)

This matter came before me pursuant to a Complaint for Declarative and Injunctive Relief filed by the Plaintiffs on June 30, 2000. Upon reviewing the verified pleadings and applicable law, it appears that the Defendants intend to enforce the provisions against Act 125 against the Plaintiffs beginning on or about July 1, 2000. It further appears that if the Defendants are permitted to enforce

the provisions of Act 125 the Plaintiffs will suffer irreparable harm, that they have no adequate remedy at law, and that they have made out a *prima facia* case. Therefore a Temporary Restraining Order and Temporary Injunction should be issued.

Since this Temporary Restraining Order is being granted on an *ex parte* basis, it will stay in effect for a limited period of time. A further hearing should be held with notice to the Defendants to determine whether or not this Temporary Restraining Order and Temporary Injunction should remain in effect. At the present time I do not find that bond is necessary; however, if the Defendants desire that a bond be posted, this issue can be addressed at a subsequent hearing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

a. That the Defendants are prohibited from enforcing the provisions of Act 125 against the Plaintiffs.

b. That a hearing shall be held on whether to continue this Temporary Restraining Order in force and effect on the 9 day of July, 2000 at 10:00 ___.m. and the Defendants are free to request an earlier hearing if they so desire and if said request can be accommodated by the Court's schedule.

IT IS SO ORDERED

/s/ Gerald C. Smoak
Presiding Judge
Fourteenth Judicial Circuit

June 30, 2000

Walterboro, South Carolina
Issued at 2:15 at Walterboro, South Carolina on June 30, 2000.

STATE OF SOUTH CAROLINA	)	C.A. No. 2000-CP-27-189
	)	
COUNTY OF JASPER	)	

IN THE SUPREME COURT OF SOUTH CAROLINA

Ingram Investments, Inc.; TBHL, Inc., and Henry Ingram, Jr.,

Plaintiffs,

vs.

Robert M. Stewart, Sr., et. al.,

Defendants.

CA. No 2000-CP-27-189

This matter comes before us by way of a motion for supercedeas of an order issued by the Hon. Gerald C. Smoak enjoining Defendants from enforcing Act 125. Defendants, by Robert M. Stewart and Robert Cook, move that we supercede and stay the order of Judge Smoak.

Based upon this court's rulings in *Joytime Distributors v. State*, 528 S.E.2d 647 (SC 1999) and *Westside Quik Shop, Inc. v. Stewart* 2000 WL 823346 (SC 2000), Defendants Stewart, et. al., are granted a supercedeas and stay and the order of the Hon. Gerald Smoak is stayed.

This matter shall be heard by petition and response to this Court, upon a schedule to be set by our order issued on or before July 6, 2000.

AND IT IS SO ORDERED

/s/ Jean H. Toal CJ
/s/ James E. Moore AJ
By Jean H. Toal
/s/ Costa M. Pleicones AJ

at Columbia
June 30, 2000
at 10:15 p.m.

Filed Jean H. Toal CJ

June 30, 2000

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Jasper County
Court of Common Pleas

Honorable Gerald Smoak, Circuit Court Judge

Case No.: 00-CP-27-189

Ingram Investments, Inc.; TBHL, Inc., and Henry Ingram, Jr. .....Respondents,

vs.

Robert M. Stewart, Sr., in his official capacity as Chief of the State Law Enforcement Division; Charles M. Condon, in his official capacity as Attorney General for the State of South Carolina.....Appellants

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NOTICE OF APPEAL

Chief Robert Stewart in his official capacity as Director of the South Carolina Law Enforcement Division and Charles M. Condon in his official capacity as Attorney General for the State of South Carolina appeal the Order of the Honorable Gerald Smoak, Dated June 30, 2000. A copy of this Order is attached. Appellants received notice of entry of the Order on June 30, 2000.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Jasper County
Court of Common Pleas

Honorable Gerald Smoak, Circuit Court Judge

Case No.: 00-CP-27-189

Ingram Investments, Inc.; TBHL. Inc., and Henry Ingram, Jr.....Respondents.

vs.

Robert M. Stewart, Sr., in his official capacity as Chief of the State Law Enforcement Division: Charles M. Condon, in his official capacity as Attorney General for the State of South Carolina.....Appellants

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PROOF OF SERVICE

I, Christie Newman Barrett, certify that I have served the Notice of Appeal and Order Granting Motion for Supersedeas on Respondents by faxing and depositing one copy of the same in the United States mail, postage prepaid, addressed to Respondent's attorney of record as follows:

Jonathan Brent Kiker, Esquire
Anne S. Douds, Esquire
Kiker & Douds P.A.
P.O. Box 2481
Beaufort, SC 29901-2481

This 30th day of June, 2000.

/s/ Christie Newman Barrett
CHRISTIE NEWMAN BARRETT
South Carolina Office of the
Attorney General
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3736
ATTORNEYS FOR APPELLANT

[SEAL]

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 3, 2000

VIA FACSIMILE AND REGULAR MAIL

Jonathan Brent Kiker, Esquire
Anne S. Douds, Esquire
Kiker & Douds P.A.
P.O. Box 2481
Beaufort, SC 29901-2481

Re: Ingram Investments, Inc.; TBHL, Inc., and Henry Ingram, Jr. v. Stewart et al. C.A. 00-CP-27-189

Dear Mr. Kiker:

I received a voice mail message from you today asking for a copy of our motion to supersede filed with the Supreme Court in the above referenced matter. Please be advised that our Office did not receive a copy of Judge Smoak's *ex parte* order granting a temporary restraining order until well after 8:00 p.m. on Friday, June 30, 2000. As you know, the enforcement of Act 125 was scheduled to begin at 12:01 a.m. on July 1, 2000, less than four hours later. Given the extraordinary circumstances presented by these time limitations, it was impossible to file a written motion with the Court. Therefore, an oral request for an emergency supersedeas was made to the South Carolina Supreme Court. A copy of the South Carolina Supreme Court's Order grating this request was faxed to your office at approximately 11:20 p.m. on June 30, 2000. An

attempt to reach you or Ms. Douds by telephone was not successful.

I am also enclosing and facing to you a copy of an order from the South Carolina Supreme Court dated July 3, 2000 directing your client to file a response setting forth why the Supreme Court's June 30, 2000 order should not remain in effect pending disposition of the action in lower court. This was sent by facsimile this morning to both your office and ours by the Clerk's office at the Supreme Court. This response should be personally served on our Office by 10:00 a.m. on July 5, 2000. Our office in turn must serve and file a response to your filing by 10:00 a.m. on July 6, 2000. Please call me at home (803 787-8473) on July 4, 2000 if you have any questions.

With kind regards, I remain

Very truly yours,

Jonathan Brent Kiker, Esquire
Anne S. Douds, Esquire
July 3, 2000
Page 2

/s/ Nathan Kaminski, Jr.
Nathan Kaminski, Jr.
Senior Assistant Attorney General

NKjr/kkf

Enclosure

cc: The Honorable Daniel E. Shearouse